

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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:
IN THE MATTER OF: :
:
BECTON DICKINSON PUERTO RICO, INC. : ADMINISTRATIVE ORDER
(Juncos Landfill Site) :
:
Respondent : Index No. II-CERCLA-40301
:
Proceeding Under Section 106 :
of the Comprehensive Environmental :
Response, Compensation and :
Liability Act (42 U.S.C. §9606) :
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JURISDICTION

The following Administrative Order (ORDER) is entered into with Becton Dickinson Puerto Rico, Inc. (Respondent, or BD) pursuant to the authority vested in the President of the United States by Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9606, which authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12316, August 20, 1981, 46 Fed. Reg. 42237, and redelegated to the Regional Administrator, Region II. Pursuant to Section 106 of CERCLA, the Commonwealth of Puerto Rico has previously been notified of this ORDER.

FINDINGS OF FACT

1. Respondent is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21) and is a responsible party under Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3).
2. Between the years 1957 and 1977 the Juncos Landfill, located south of 9th Street and east of State Road 198 in Juncos, Puerto Rico, served as a municipal landfill. The landfill also served as a disposal site for industrial wastes which included broken and/or intact mercury-containing thermometers produced at the Becton Dickinson Puerto Rico, Inc. plant located at State Road 31, KM 1.8, Juncos, Puerto Rico. This landfill is a facility within the meaning of §101(9) of CERCLA, 42 U.S.C. §9601(9) (hereinafter "the site" or the "Juncos Landfill" or "the facility"). BD did not and does not now own the site.

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3. Based on interviews conducted in the Winter and Spring of 1983 by EPA and the Puerto Rico Environmental Quality Board (EQB) of individuals familiar with operations at the Juncos Landfill and the disposal practices at the BD Juncos plant: a) Respondent disposed of an average of in excess of 1000 broken off-specification and/or discarded thermometers per week at the site between the early 1960's and the mid-1970's; and b) although steps usually were taken by BD to remove and reclaim the mercury contents of the thermometers by breaking the bulbs, mercury often remained in the stems, which were disposed of at the Juncos Landfill.

4. The results of a site inspection, including sampling of soil, leachate, surface water and air, conducted by EPA during the period September 6 through September 23, 1983 revealed the following:

- a) Mercury was detected in the ambient air in the southwest portion of the landfill at 29 ng/cubic meter;
- b) Leachate samples collected off-site contained mercury at concentrations ranging up to 2 parts per billion (ppb);
- c) The results of soil sampling in the southwest portion of the site revealed mercury at 78 parts per million (ppm). Soil samples collected in gardens and behind homes adjacent to the site were found to contain mercury at levels ranging up to 0.16 ppm;
- d) Thousands of broken thermometer pieces, some still containing mercury, and some marked "B-D U.S.A.", were observed at the site and a representative sample collected.

5. During site inspections in August and September 1983, EPA personnel witnessed children playing on the site and in the leachate. In addition, during these inspections and on at least four other occasions in 1983, EPA personnel observed that gardens were planted on the north face of the Juncos landfill and that more than a dozen homes have been built along the north side of the site, abutting and/or on the site.

6. Mercury is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

7. The presence of mercury at the facility, and its past and potential migration to surrounding soils, groundwater, surface water and/or air, constitutes an actual release and a threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

8. Environmental exposure to mercury and its compounds poses a significant threat to human health. The federal Centers for Disease Control (CDC), upon reviewing the results of analyses of samples taken at the site in September 1983 and discussing site conditions with EPA, concluded, "... it is the opinion of CDC that the above site [Juncos Landfill] represents an immediate and

significant risk of harm to human health." CDC further concluded that, "Steps should be taken as soon as possible to mitigate these dangers to the public health and welfare."

9. Based on the conclusions of CDC and a review of the available data, the actual and threatened release of hazardous substances from the facility may present an imminent and substantial endangerment to the public health and welfare and the environment. Furthermore, immediate corrective action as contemplated by Section 300.65 of the National Oil and Hazardous Substance Contingency Plan (National Contingency Plan or NCP) is appropriate in this case to prevent and/or mitigate immediate and significant risk of harm to human health.

DETERMINATION OF THE REGIONAL ADMINISTRATOR

10. Based on the above FINDINGS, the Regional Administrator has determined that the release and the threat of release of a hazardous substance from the facility may present an imminent and substantial endangerment to the public health and welfare and the environment. The Regional Administrator also has determined that it is necessary that action be taken to prevent and/or mitigate immediate and significant risk of harm to human health.

ORDER

11. Based on the foregoing, it is hereby Ordered and Agreed that Respondent, Becton Dickinson Puerto Rico, Inc. shall undertake immediate corrective actions at the facility in accordance with the schedule specified below. All activities set forth below shall be completed as soon as possible even though time periods for their completion are specified herein.

I. Immediate Corrective Actions

A. For the purpose of abating risks associated with human exposure to mercury present at and in the vicinity of the site, and pending the implementation of long-term remedial action, Respondent shall, within 30 days of the effective date of this ORDER, submit to EPA for review and approval a detailed Operations Plan (the Plan) for the performance of the following activities:

1) Within 60 days of the effective date of this ORDER, post and maintain clearly legible signs every 25 feet along the perimeter of the site warning the public that entry onto the site may be dangerous to human health because of the presence of hazardous substances at the site.

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2) Within 75 days of the effective date of this ORDER, survey the landfill to determine the locations of exposed mercury and/or mercury-containing wastes (including thermometers and/or parts thereof) and cover all such areas with a soil cover sufficient to minimize human contact with mercury, followed by periodic inspections throughout the period prior to completion of a remedial action to determine if further cover is necessary. (One such location presently known to EPA is an area of approximately one (1) acre in the southwest portion of the site.)

3) Within 90 days of the effective date of this ORDER, or within such additional period of time as may be determined by EPA, complete investigative activities sufficient to determine if mercury wastes present at the site have been tracked into nearby homes and/or released into adjacent streams and concentrated in edible fish.

At a minimum, the Operations Plan must fully describe all designs; construction techniques; material and equipment specifications; procedures (to include any necessary maintenance and/or monitoring); and schedules which will be followed and must, where appropriate, include references to applicable EPA methods of sampling and analysis. The Operations Plan also must include: quality assurance and quality control procedures; health and safety procedures; and a contingency plan for conducting site activities. The Operations Plan shall remain in effect until the site remediation is completed in accordance with the NCP (40 CFR, Part 300) and shall be modified in accordance with comments provided by EPA.

B. EPA shall review the Operations Plan and provide comments within 10 days of receipt of the Plan. In its review, EPA shall determine whether the proposals set forth in the Plan are technologically feasible and in accordance with sound engineering and/or scientific practice. Respondent shall modify the Plan as necessary to conform to EPA's comments and shall submit the corrected version to EPA as soon as possible but not later than 10 days after Respondent's receipt of EPA's comments.

II. Sampling, Quality Assurance and Reporting

A. Except as otherwise directed by EPA, Respondent shall use Quality Control/Quality Assurance and Chain of Custody methodologies as set forth in Sections 10 and 1.3, respectively, of the EPA publication entitled "Test Methods for Evaluating Solid Waste" (SW-846) and other relevant EPA guidance.

B. Upon request by EPA, Respondent shall provide EPA or its designated representative with duplicate and/or split samples of any samples collected in furtherance of work performed in accordance with this ORDER.

C. Upon request by EPA, all data and information, including raw monitoring data, generated pursuant to this ORDER by Respondent or on behalf of Respondent, shall be made available by Respondent to EPA or its designated representative.

D. All records produced by Respondent and delivered to EPA in the course of implementing this ORDER shall be available to the public unless identified as confidential by Respondent in conformance with 40 CFR, Part 2. (Furthermore, it is understood by the parties to this ORDER that EPA may release all such records to the Environmental Quality Board of Puerto Rico (EQB), and EQB may make those records available to the public unless Respondent conforms with appropriate Puerto Rico law and regulations regarding confidentiality.) Records so identified shall be treated as confidential only in accordance with the applicable confidentiality regulations. Monitoring data and hydrological and geological information shall not be considered confidential.

E. All correspondence, reports, work plans and other writings required under the terms of this ORDER to be submitted to EPA shall be sent by certified mail, return receipt requested, to the following addressees:

Chief, Hazardous Waste Site Branch
Office of Emergency and Remedial Response
U.S. Environmental Protection Agency
Room 402
26 Federal Plaza
New York, New York 10278

Attention: Wayne Noel Pierre, Project Officer

Chief, Emergency Response Branch
Office of Emergency and Remedial Response
U.S. Environmental Protection Agency
Edison, New Jersey 08817

F. All correspondence from EPA to BD shall be sent by certified mail, return receipt requested, to:

Manager for Safety and Loss Prevention
Becton Dickinson and Company
Mack Centre Drive
Paramus, New Jersey 07652

Copies of all such correspondence shall be sent to:

Vice President and General Counsel
Becton Dickinson and Company
Mack Centre Drive
Paramus, New Jersey 07652

G. Prior to performing any of the studies or other actions required under this ORDER, Respondent shall provide to EPA for

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its review the names, titles and qualifications of all professionals engaged in the conduct of such actions.

III. Respondent's Facility Coordinator and
EPA Inspection Authority

A. Respondent shall designate a Facility Coordinator who shall be responsible for oversight of the implementation of this ORDER, including all activities required herein. The Facility Coordinator shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this ORDER. All correspondence and other writings from EPA to BD shall be made available to the Facility Coordinator. Respondent shall notify EPA in writing of the name, title, address and phone number of the person designated to be the Facility Coordinator, who shall be designated within 10 days following the effective date of this ORDER. Counsel for BD shall not be eligible to be Facility Coordinator.

B. Respondent shall have the right to change its Facility Coordinator at any time. Such change shall be accomplished by notifying EPA in writing at least five working days prior to the change. If such advance notice is not possible, notice shall be given by the best means and as far in advance as possible under the circumstances.

C. EPA and EPA's designated representatives, including but not limited to their employees, agents, contractors and consultants, and including the EPA-designated on-scene coordinator, shall have authority to enter and freely move about the site and any premises under the control of BD at all reasonable times, including but not limited to any time that work is being carried out pursuant to this ORDER, for the purposes of inspecting and observing Respondent's progress in implementing the requirements of this ORDER, or for the purpose of verifying the data submitted to EPA by Respondent concerning such implementation. Respondent shall forthwith honor all requests for access by EPA or EPA's designated representatives, and also, at reasonable times, shall permit such persons to inspect and copy all writings, including all data, in any way pertaining to work undertaken pursuant to this ORDER. Notwithstanding the above, EPA hereby retains all its inspection authority under CERCLA and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. The Environmental Quality Board of Puerto Rico (EQB) and its designated representatives shall be eligible to be designated representatives of EPA under this Paragraph.

IV. General Provisions

A. This ORDER shall become effective on the date that it is signed by the Regional Administrator.

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B. All actions performed by Respondent in implementing this ORDER shall be in compliance with all applicable laws and regulations, including but not limited to Section 300 of the National Contingency Plan.

C. All reports, work plans and other writings required under the terms of this ORDER, upon approval by EPA, are incorporated into this ORDER.

D. All decisions of EPA under this ORDER, including approvals, disapprovals, and requests for modifications of reports, work plans, specifications, schedules, and other work outputs will be communicated in writing to Respondent by the Chief, Hazardous Waste Site Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

E. No informal advice, guidance, suggestions or comments by EPA or EQB regarding reports, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required by this ORDER.

F. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, its officers, directors, employees, agents, servants, receivers, trustees, successors, or assignees, or of any persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this ORDER, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out activities pursuant to this ORDER.

G. This ORDER shall apply to and be binding upon Respondent and Respondent's officers, directors, employees, agents, servants, receivers, trustees, successors, and assigns.

H. Nothing contained in this ORDER shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

I. Respondent's activities under this ORDER shall be performed within the time limits set forth herein unless performance is delayed by events which constitute a force majeure. For purposes of this ORDER, a force majeure is defined as any event arising from causes beyond Respondent's reasonable control. Financial considerations shall not be considered circumstances beyond the control of Respondent. In the event of a force majeure, Respondent shall be obligated to perform the affected activities within a time period which shall not exceed the time period of the delay attributed to the force majeure, provided, however, that no deadline shall be extended beyond a period of time that is reasonably necessary. Respondent shall verbally notify EPA's On-Scene Coordinator as soon as possible following Respondent's

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awareness that circumstances constituting a force majeure have occurred or are likely to occur. If the On-Scene Coordinator cannot be contacted, BD shall attempt to leave a message at his or her office and shall immediately proceed to notify the EPA Project Officer at 212-264-1575. In addition, BD shall notify EPA in writing, over the signature of a responsible official of BD, with a copy to those persons identified in Paragraph 11(II)(E), above, as soon as possible but not later than ten (10) days after Respondent becomes aware that circumstances constituting a force majeure have occurred. Such written notice shall be accompanied by all available documentation, including but not limited to third-party correspondence, and shall include the following: 1) a description of the circumstances, and BD's rationale for interpreting such circumstances as being beyond BD's control; 2) the actions (including dates) that BD has taken and/or plans to take to minimize any delay; and 3) the date by which or the time period within which BD proposes to complete the delayed activities.

J. As may be directed by EPA, Respondent shall give EPA advance notice of activities expected to be conducted under this ORDER.

V. Enforcement Actions

A. In the event that Respondent fails to adhere to any requirement of this ORDER; or, notwithstanding compliance with the terms of this ORDER, upon the occurrence or discovery of a situation as to which EPA would be empowered to take any further response action, including but not limited to an immediate removal, planned removal, and/or interim remedial action; or in the event of a release or threatened release not addressed by this ORDER; or upon the determination that action beyond the terms of this ORDER is necessary to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be posed by this facility; or under any other circumstances authorized by law and not inconsistent with terms of this ORDER, EPA may, after notice to Respondent, institute federally funded response activities and subsequently pursue cost recovery actions available, and/or EPA may issue orders to Respondent pursuant to available statutory authority.

B. EPA reserves its power to bring an action against Respondent pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any costs incurred in oversight of BD's implementation of this ORDER, and any other costs incurred by EPA in connection with investigative or response activities at the site.

C. Notwithstanding any other provision of this ORDER, EPA reserves the power to take enforcement actions, including actions for monetary penalties, for any violation of law or this ORDER. Such enforcement actions may include, though need not be limited to, actions pursuant to Section 106(b) of CERCLA,

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42 U.S.C. §9606(b), seeking up to \$5000 per day in penalties for any willful violation or any failure or refusal of Respondent to comply with this ORDER or any portion hereof. Failure to comply with this ORDER or any portion hereof without sufficient cause also may subject Respondent to an action under Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3), for punitive damages in the amount of three times the total of all costs incurred by the government as a result of Respondent's failure.

D. Respondent's consent to this ORDER shall not be construed as a waiver of any defenses which BD may wish to raise in any action to enforce the terms of this ORDER, or in any other proceedings, and nothing contained in this ORDER shall constitute an admission by BD with respect to any factual or legal matter. However, BD agrees not to contest the authority or jurisdiction of the Regional Administrator to issue this ORDER, and also agrees not to contest the existence of the statutory prerequisites necessary for the Regional Administrator's issuance of this ORDER.

Effective this 15th day of March, 1984 with the agreement and consent of the parties.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Jacqueline E. Schaffer
JACQUELINE E. SCHAFER
Regional Administrator
U.S. Environmental Protection Agency
Region II

3/15/84
Date

BECTON DICKINSON PUERTO RICO, INC.

R. P. Ohmuller
RAYMOND P. OHLMULLER
Assistant Secretary

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Date